



Total Petrochemicals & Refining USA, Inc.

Corporate Headquarters

Via Email

Mr. Edwin Quinones, Attorney
Office of Regional Counsel
(6RC-S)
U.S. EPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Re: Star Lake Canal Superfund Site CERCLA Section 104(e) Request

January 8, 2018

Dear Ed:

Thank you again for your emails on November 28, 2017 and the phone call on December 15, 2017 regarding the EPA's Information Request Pursuant to CERCLA Section 104(e) relating to the Star Lake Canal Superfund Site (the "104(e) Request") to Total Petrochemicals & Refining USA, Inc. ("TPRI"). TPRI appreciates the extension until January 26, 2018, to respond to the 104(e) Request, although, as explained below, the extension may not be necessary.

The focus of the 104(e) Request is on TPRI's "Molasses Bayou Property." Request No. 1 in the 104(e) Request indicates that the term "Molasses Bayou Property" should include "parcel(s) and/or tract(s) of land situated in, and/or adjacent to, the area known as Molasses Bayou in Jefferson County, Texas and/or parcel(s) and/or tract(s) of land between Pure Atlantic Road (a/k/a Highway 366) and Molasses Bayou in Jefferson County, Texas." As you know, TPRI owns and operates a refinery that is situated east of the areas that comprise the Star Lake Canal Superfund Site. However, the refinery and the associated land owned by TPRI does not meet the definition of "Molasses Bayou Property."

TPRI's refinery is not "in, and/or adjacent to, the area known as Molasses Bayou." For over a decade, the terms Molasses Bayou, Molasses Bayou Waterway AOI and Molasses Bayou Wetlands AOI have been consistently defined in reports concerning the Star Lake Canal Superfund Site. Further, the physical features depicted in figures and maps in those reports have remained the same as well. As shown in Figure 1 and Figure 2 of the Star Lake Canal Record of Decision ("Star Lake ROD") (attached as Attachment A), Molasses Bayou Waterway consists of the highlighted waterway that intersects the Star Lake Canal in two places, and the Molasses Bayou Wetland is the defined area that immediately surrounds the Molasses Bayou Waterway. See also Star Lake ROD, § 12.0, page 13. These defined areas are similarly depicted in each and every Remedial Investigation Work Plan and Remedial Investigation report for the Site. See, e.g., August 2011 Final Tier 2 Remedial Investigation Report, Figures 1-1 through 10-1. Based on the EPA, Texas Commission on Environmental Quality ("TCEQ") and other agencies' well-established definitions of "the area known as Molasses Bayou," TPRI does not own land situated in or adjacent to that area. Similarly, in light of the EPA's well-established definitions of the Site and the AOIs that comprise it, as set forth in every work plan, every report, and the Star Lake ROD, the reference to "land between Pure Atlantic



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Road (a/k/a Highway 366) and Molasses Bayou in Jefferson County, Texas" should not include any property owned by TPRI. The TPRI refinery is east and south of any land that is in or adjacent to "the area known as Molasses Bayou." Because each of the subsequent numbered Requests pertains to TPRI's "Molasses Bayou Property," and because TPRI owns no such property, none of the other Requests appear to be applicable.

TPRI could assume that EPA intended to reference the TPRI refinery facility in Port Arthur by the phrase "[TPRI's] Molasses Bayou Property," but doing so would lead to absurd results. For instance, some historical releases of hazardous substances within the refinery could be in the form of a spill on concrete that is easily contained and cleaned, and presented no legitimate reason for incurring response costs at the Star Lake Canal Superfund Site. In addition, many vessels containing hazardous substances in the TPRI refinery have secondary and tertiary containment structures around them, which greatly reduces the likelihood that anything less than a catastrophic loss of primary containment would result in off-site impacts. If the 104(e) Request was intended to apply to the refinery, TPRI would be required to search for, review, and produce a huge volume of records. Such an undertaking would be extremely burdensome and result in the agency receiving vast amounts of information having no relevance to potential contamination of the Site.

In addition to its questions around the appropriate subject of the 104(e) Request, TPRI also questions the basis on which EPA asserted in its November 1, 2017 General Notice Letter that "[b]ased on the information collected, the EPA believes that [TPRI] may be liable . . . as an arranger/generator at the Site." In that letter, the agency stated that the enclosed "Nexus Summary" was "documentation provided to the EPA that indicates you may be liable as one who arranged for disposal of hazardous substances at the Site." TPRI has reviewed this so-called "Nexus Summary" and found that the conclusory statements regarding an alleged link between TPRI's refinery and contamination at the Site are unsubstantiated. For example, in Part 7, it states that "[t]he primary contributing pathway associated with [refinery] operations is the 'right prong' of the Molasses Bayou Waterway, which joins the 'left prong' of the Molasses Bayou Waterway within the boundary of the Molasses Bayou Wetlands AOI." EPA's Star Lake ROD, pages 62-64, are cited as support for this statement, but those pages merely summarize the selected remedy for the Molasses Bayou Waterway AOI – neither the "right prong" or the "left prong" are mentioned at all.

Similarly, and most tellingly, no citation whatsoever is provided in support of the following assertion that appears in Part 7: "[c]ontamination from the 'right prong' of the Molasses Bayou would have contributed to the contamination of the Molasses Bayou Waterway AOI." No citation can be provided, as this assertion is refuted by multiple documents within the administrative record for the Site that reflect the collective professional judgment of two experienced consulting firms and multiple agencies charged with protecting human health and the environment. Conestoga-Rovers & Associates and Cardno ENTRIX performed extensive sampling and analysis of the entire Site as part of the Remedial Investigation and Feasibility Study. Their work was reviewed and commented on by multiple federal and state agencies, including the EPA, TCEQ, the U.S. Fish & Wildlife Service, and the National Oceanic and Atmospheric Administration. Neither of the consulting firms that designed and performed the investigations, and none of the multiple expert agencies that reviewed and commented on their work, concluded that sampling and analysis of the "right prong" was necessary, that the "right prong" should be included within the Site AOIs, or that the refinery was a source of contamination at the Site. As stated in my November 27, 2017 email, we respectfully request copies of any information or documents relied on by the EPA to formulate its new belief that there may be a connection between TPRI's refinery operations and contamination of the Site. We also encourage the EPA to consider requesting that the author(s) of the "Nexus Summary" provide substantiation for all verifiable statements of fact within the document.



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In light of the above, and as discussed during our call on December 15, 2017, TPRI requests that the EPA and TPRI engage in further discussions to clarify the basis for and scope of the 104(e) Request. We are available to discuss this with you at any time.

Please also note that nothing in this letter is intended to waive or limit TPRI's right to further object to the 104(e) Request or assert any claims or defenses.

Sincerely,

A handwritten signature in blue ink, appearing to read "Joe Herbst", with a long horizontal flourish extending to the right.

Joseph R. Herbst
Assistant General Counsel – HSE

ATTACHMENT A

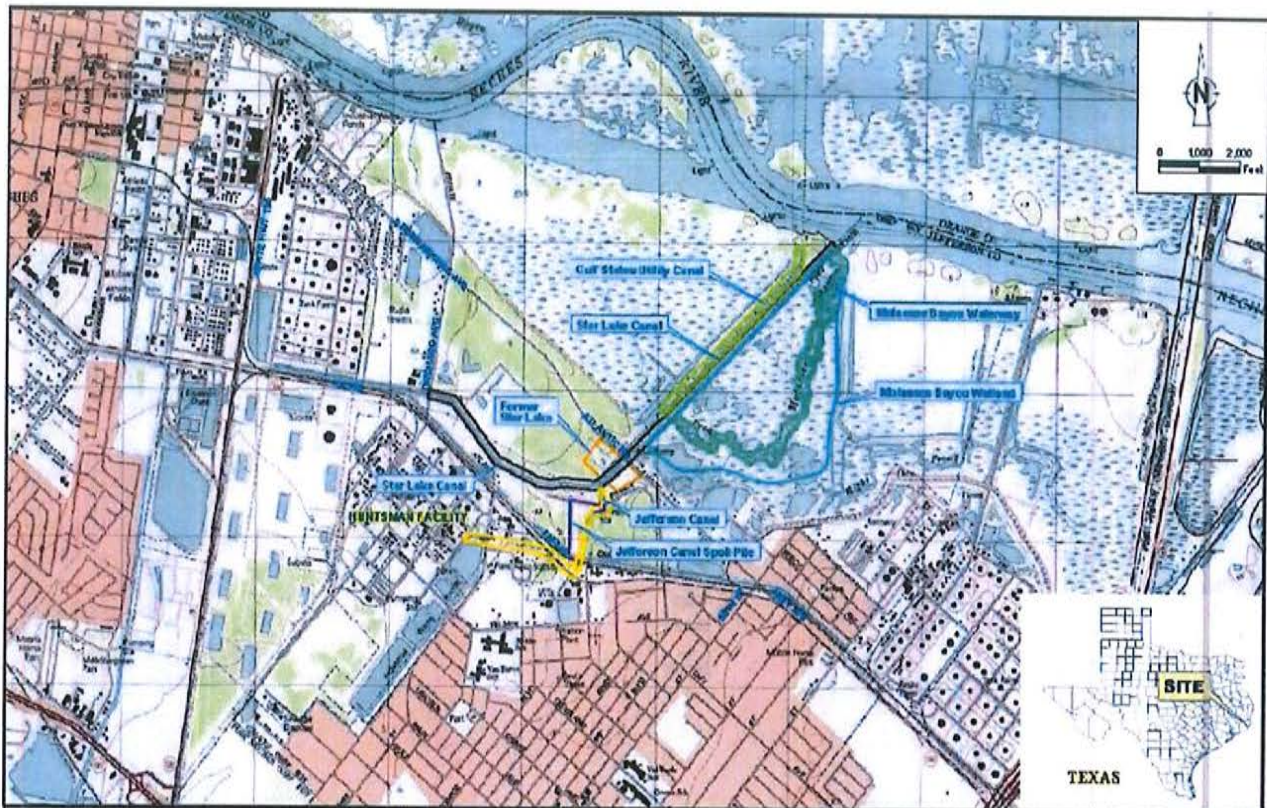


Figure 1 Area Map, Star Lake Canal Superfund Site, Jefferson County, Texas



Figure 2 Areas of Investigation, Star Lake Canal Superfund Site, Jefferson County, Texas